

**DRAFT Proposed Stormwater Management Bylaw for the  
Town of Brewster, Massachusetts**

*This proposed Stormwater Management Bylaw was prepared by the Horsley Witten Group, Inc. for the Town of Brewster as part of Phase III of the town's Integrated Water Resource Management Plan (IWRMP). It was created as a means for the Town to: 1) comply with current and pending requirements of the NPDES Phase II Small MS4 Stormwater Program; 2) minimize the impact of polluted stormwater runoff on the Town's surface and groundwater resources from new development; and 3) capitalize on opportunities to improve water quality and recharge during redevelopment and repaving projects. This draft Bylaw was updated to reflect input from the Planning Board related to single and two-family residential projects, road repaving/grading, and applicability thresholds. This Bylaw assumes primary administration by the Planning Board. To streamline the review process, the Conservation Commission will be the stormwater permit authority for projects within wetland jurisdiction.*

**Chapter 999, STORMWATER MANAGEMENT BYLAW**

**§ 999-1. Purpose**

Construction and post-construction stormwater runoff may increase flooding, channel erosion, nonpoint source pollution, sedimentation, and decrease groundwater recharge. The purpose of this Bylaw is to establish minimum stormwater management requirements and procedures in order to minimize damage to public and private property and infrastructure; safeguard the public health, safety, environment and general welfare; protect aquatic resources and wildlife habitat; and conserve groundwater supplies. This Bylaw seeks to meet that purpose through the following objectives:

- A. Establish decision-making processes surrounding land development and redevelopment that protect the integrity of the watershed and preserve and/or restore the health of local water resources, such as Pleasant Bay, Cape Cod Bay, freshwater ponds, streams, and groundwater that is Brewster's sole source drinking water supply.
- B. Ensure that new development and other land alterations maintain pre-development runoff characteristics in order to prevent flooding, erosion, sedimentation, nonpoint source pollution, and property damage, and to maintain aquatic habitats.
- C. Take advantage of redevelopment and road repaving opportunities to improve stormwater management in existing areas.
- D. Promote the use of low impact development ("LID") approaches, such as reducing impervious cover, maintaining natural hydrology, preserving open space, and water conservation via rainwater reuse.
- E. Establish minimum construction and post-construction stormwater management standards and design criteria to control stormwater runoff quantity and quality and to account for changing rainfall patterns and groundwater levels associated with climate change.

- F. Ensure that soil erosion and sediment control measures during construction are incorporated into the site design process and are implemented and maintained throughout the duration of construction.
- G. Ensure the long-term function and safety of post-construction stormwater practices.
- H. Establish administrative procedures for: the submission, review, and approval or disapproval of stormwater management plans and erosion and sedimentation control plans; the inspection of approved active projects; and long-term follow up.
- I. Ensure compliance with requirements of the National Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (“MS4”s) and other applicable State and Federal mandates.

§ 999-2. **Authority**

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, pursuant to the Regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the residents of the Town of Brewster at the 2015 Special Town Meeting and as amended.

§ 999-3. **Administration**

- A. The Planning Board and Conservation Commission shall be the permit granting authorities for this Bylaw. Any powers granted to, or duties imposed upon, these Review Boards may be delegated in writing by the Review Board to any Town employee, board, commission, committee or agent, hereby known as the “Reviewing Agent.”
- B. The Review Board or its Reviewing Agent shall take any of the following actions as a result of an application for a Stormwater Management Permit (“SMP”) as specifically defined within the Stormwater Management Regulations promulgated as a result of this Bylaw: Approval, Approval with Conditions, or Disapproval.
- C. A decision of the Review Board or its Reviewing Agent shall be final. Further relief of a decision by the Review Board or its Reviewing Agent made under this Bylaw shall be reviewable in the Superior Court and action filed within 60 days thereof, in accordance with M.G.L. Ch 249 § 4.
- D. For residential projects not requiring a SMP, but subject to the requirements of this Bylaw, stormwater measures shall be evaluated as part of the Building Permit process.

§ 999-4. **Regulations**

- A. The Planning Board may adopt, and periodically amend, Regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures and administration of this Stormwater

1 Management Bylaw by majority vote of the Planning Board, after conducting an  
2 advertised public hearing to receive comments on any proposed revisions. Failure by  
3 the Planning Board to promulgate such Regulations or a legal declaration of their  
4 invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.

- 5 B. The Planning Board will utilize, at a minimum, the policy, criteria, and standards of  
6 the most recent version of DEP's Massachusetts Stormwater Management Standards  
7 ("MSWMS") and the Town's approved MS4 Permit through EPA Region 1 for  
8 execution of the provisions of this Bylaw, except where the Town of Brewster  
9 specifies more stringent standards. Unless otherwise specified in the Town of  
10 Brewster Stormwater Management Regulations, stormwater management practices  
11 that are designed, constructed, and maintained in accordance with these criteria will  
12 be presumed to be protective of Massachusetts water quality standards.

13  
14 § 999-5. **Applicability**

- 15 A. A SMP shall be obtained for all activities, new development, and redevelopment  
16 projects disturbing 2,500 square feet or more of land that may alter the quantity or  
17 quality of stormwater runoff, except for single and two-family residential projects or  
18 exempt activities pursuant to § 999-5.D of this Bylaw.
- 19 B. Road improvement projects disturbing 2,500 square feet or more of land are required  
20 to comply with stormwater regulations when the sub-base is intersected during  
21 resurfacing of paved roads; when paved or unpaved roads are being widened; or when  
22 the project includes a direct discharge to a beach, pond, or wetland.
- 23 C. A Building Permit or approval from the Building Inspector documenting stormwater  
24 control measures shall be obtained for construction, renovation, or modification of a  
25 single or two-family dwelling and associated accessory structures disturbing 2,500  
26 square feet or more of land.
- 27 D. Exemptions
- 28 1. Normal maintenance and improvement of land in agricultural use as defined by  
29 the Wetlands Protection Act regulation 310 CMR 10.04 and MGL Chapter 40A  
30 Section 3 Zoning Act.
- 31 2. Emergency repairs to existing utilities.
- 32 3. Emergency repairs to existing roads or their drainage systems, or to any  
33 stormwater management facility that poses a threat to public health or safety or as  
34 deemed necessary by the Planning Board, Board of Health, Conservation  
35 Commission, or Department of Public Works.
- 36 4. Any projects subject to review by the Planning Board and/or the Conservation  
37 Commission for which all necessary approvals and permits have been issued  
38 before the effective date of this Bylaw and/or applications have been filed with  
39 the respective entities within ninety (90) days of the effective date of this Bylaw.

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41 § 999-6. **Procedures**

1 Permit Procedures and Requirements shall be defined and included as part of any Regulations  
2 promulgated under § 999-4 of this Bylaw.

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4 **§ 999-7. Performance Standards**

5 A. The Stormwater Management Standards shall be defined and included as part of any  
6 Regulations promulgated under § 999-4 of this Bylaw.

7 B Applicable single or two-family residential activities are not required to obtain a  
8 SMP, but will be required to provide erosion and sediment control during  
9 construction and to minimize off-site stormwater runoff through disconnection, dry  
10 wells, rain gardens, cisterns, or other residential on-site stormwater measures.

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12 **§ 999-8. Waivers**

13 A. The Review Board may in its discretion, and after due consideration, decide to waive  
14 and exempt strict compliance with any requirement of this Bylaw or the Regulations  
15 promulgated hereunder, where it makes a written finding that such action is:

16 1. Allowed by federal, state and local statutes and/or regulations;

17 2. In the public interest; and

18 3. Consistent with the purpose and intent of this Bylaw under § 999-4.

19 B. Criteria for granting a waiver shall be defined and included as part of the Regulations  
20 promulgated under § 999-4 of this Bylaw.

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22 **§ 999-9. Stormwater Mitigation**

23 Under certain circumstances where on-site options for stormwater mitigation are limited, or  
24 where off-site options provide better protection, the Review Board may allow the applicant to  
25 implement off-site stormwater mitigation. This may be allowed only where a net public benefit  
26 is clearly demonstrated and documented by meeting or exceeding the purpose and intent of this  
27 Bylaw.

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29 **§ 999-10. Enforcement**

30 The Building Commissioner shall enforce this Bylaw, Regulations, orders, violation notices, and  
31 enforcement orders, and may pursue all civil and criminal remedies for such violations.  
32 Enforcement shall be further defined and included as part of any Regulations promulgated under  
33 § 999-4 of this Bylaw.

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35 **§ 999-11. Severability**

36 A. The invalidity of any section or provision of this Bylaw shall not invalidate any other  
37 section or provision hereof.

1 B. This Bylaw shall not interfere with or annul any other bylaw, rule, regulation or  
2 permit when the aforementioned specifically states that it is controlling. However,  
3 when any other bylaw, rule, regulation or permit does not specifically state that it is  
4 controlling, the Stormwater Management Bylaw, if more stringent, shall govern.

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6 § 999-12. **Definitions**

7 The following terms are defined for the purposes of this Bylaw:

8 ALTER: Any activity, which will measurably change the ability of a ground surface area to  
9 absorb water, increase polluted runoff, and/or change the existing surface drainage patterns. The  
10 term “alter” shall include “alteration,” “disturb” and “disturbance,” and “clearing.”

11 DISTURBANCE: Any activity that causes a temporary or permanent change in the position or  
12 location of soil, vegetation, impervious cover, or other land surface that exposes soils to potential  
13 erosion or otherwise alters surface drainage conditions.

14 DIRECT DISCHARGE: Any pipe, open channel, or concentrated flow path where stormwater  
15 runoff is conveyed directly to a waterbody without prior stormwater treatment or volume  
16 reduction.

17 IMPERVIOUS COVER: Any material or structure on or above the ground that prevents water  
18 from infiltrating through the underlying soil. Impervious cover includes, without limitation,  
19 paved parking lots, roads, sidewalks, driveways, patios, roof tops, and swimming pools. Gravel  
20 and dirt surfaced roads and parking areas that can become compacted by vehicles and heavy  
21 equipment are considered impervious. Permeable pavers and porous pavements designed to  
22 prevent compaction are not considered impervious. The term “impervious cover” shall include  
23 “impervious area” and “impervious surface.”

24 INFILTRATION: The act of conveying precipitation or runoff into the ground to permit  
25 groundwater recharge and the reduction of surface runoff from a project site.

26 LOW IMPACT DEVELOPMENT (LID): An approach to land development design and  
27 stormwater management that attempts to mimic the natural hydrology of the site by avoiding,  
28 reducing and mitigating impacts with natural, non-structural and structural measures.

29 MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS (MSWMS): The latest  
30 version as may be amended of the Stormwater Management Standards and accompanying  
31 Stormwater Handbook issued by the Massachusetts Department of Environmental Protection  
32 pursuant to authority under the Wetlands Protection Act, M.G.L. c. 131, § 40, and the  
33 Massachusetts Clean Waters Act, M.G.L. c. 21, §§26-53. The Stormwater Management  
34 Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k)  
35 and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

36 MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM  
37 DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying  
38 stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm  
39 drain, pumping facility, retention or detention basin, natural or man-made or *altered* drainage

channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Brewster.

**NEW DEVELOPMENT:** Any construction or land disturbance on a lot, or portion of a lot, or linear right-of-way or easement that is currently in a vegetated state.

**NONPOINT SOURCE POLLUTION:** Pollution from many diffuse sources caused by rainfall, snowmelt, or other method of pollutant transport moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

**PRE-DEVELOPMENT:** The conditions that exist prior to the proposed development. Where phased development or plan approval occurs (e.g., preliminary grading, roads, and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

**POST-CONSTRUCTION or POST-DEVELOPMENT:** The conditions that reasonably may be expected or anticipated to exist after completion of the proposed development activity in accordance with approved plans on a specific site or tract of land. Post-construction refers to the phase of a new development or redevelopment project after completion and does not refer to or include the construction phase of a project.

**RECHARGE:** The replenishment of groundwater reserves.

**REDEVELOPMENT:** Any construction, alteration, improvement, repaving, or resurfacing on a site that contains impervious cover, provided the activity does not increase net impervious cover.

**ROAD IMPROVEMENTS:** For the purposes of this bylaw, work on existing roads that trigger stormwater management compliance include resurfacing projects when the sub-base is intersected, the road is being widened, or when the project includes direct drainage to a beach, pond, or wetland. Re-grading of unpaved roads does not trigger compliance with stormwater standards unless the road is being widened, or if it includes a direct discharge to a beach, pond, or wetland.

**RUNOFF:** Rainfall or snowmelt water flowing over the ground surface or other surface (e.g., rooftop).

**SITE:** The entire parcel of land being developed or redeveloped.

**STORMWATER MANAGEMENT PRACTICE:** Engineered structures and non-structural (e.g., site design, vegetation) measures used to control discharge volumes, manage peak flow rates, filter, infiltrate, reuse, or prevent pollutants from coming into contact with stormwater.

**STORMWATER MANAGEMENT PERMIT (SMP):** A permit issued by the Reviewing Board after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater runoff.

1 Terms not defined shall be construed according to their customary and usual meaning, unless the  
2 context indicates a special or technical meaning. Words used in the present tense include the  
3 future; words in the singular number include the plural and words in the plural number include  
4 the singular; and the word "shall" is mandatory and not directory. Additional definitions may be  
5 adopted by separate regulation.